

**A                    Kerajaan Malaysia v Pangkal Permata (M) Sdn Bhd**

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 21 NCVC-29–06  
OF 2012

**B**                    VARGHESE GEORGE J  
28 FEBRUARY 2013

**C**                    *Revenue Law — Income tax — Recovery by government of taxes due and payable  
— Whether defendant could defeat recovery action by claiming debt statute-barred  
— Whether Limitation Act 1953 had no application to proceedings by government  
to recover unpaid tax — Limitation Act 1953 s 33(1)*

**D**                    In the instant action the plaintiff had applied to enter summary judgment  
against the defendant for unpaid tax amounting to RM1.9m. The affidavit in  
support of the application exhibited copies of the notice of assessment for the  
relevant year and a certificate issued pursuant to s 142(1) of the Income Tax Act  
1967. The only issue raised by the defendant was that the plaintiff's claim was  
**E**                    time-barred under the Limitation Act 1953 ('Act').

**Held**, allowing the application:

The defendant's contention was wholly misconceived in law. The proviso to  
s 33(1) of the Act expressly excluded the application of the Limitation Act 1953  
**F**                    to any proceedings by the Government to recover any tax (see para 7).

**[Bahasa Malaysia summary]**

Dalam tindakan ini plaintif telah memohon untuk memasuki penghakiman  
ringkas terhadap defendan untuk cukai yang tak berbayar berjumlah RM1.9  
**G**                    juta. Afidavit yang menyokong permohonan mempamerkan salinan-salinan  
notis taksiran untuk tahun relevan dan sijil yang dikeluarkan berikutan  
s 142(1) Akta Cukai Pendapatan 1967. Satu-satunya isu yang dibangkitkan  
oleh defendan adalah bahawa tuntutan plaintif dihalang masa di bawah Akta  
Had Masa 1953 ('Akta').

**H**                    **Diputuskan**, membenarkan permohonan:

Hujahan defendan kesemuanya adalah salah tanggap dari segi undang-undang.  
Peruntukan kepada s 33(1) Akta dengan nyata mengecualikan permohonan  
Akta Had Masa 1953 kepada mana-mana prosiding oleh kerajaan untuk  
**I**                    mendapatkan kembali apa-apa cukai (lihat perenggan 7).]

**Notes**

For cases on recovery by government of taxes due and payable, see 10 *Mallal's  
Digest* (4th Ed, 2011 Reissue) paras 2637–2648.

**Cases referred to**

*Chong Woo Yit v Government of Malaysia* [1989] 1 MLJ 473; [1989] 2 CLJ 87, SC (refd)

*Government of Malaysia v Abdul Rahman* [1975] 1 MLJ 276 (refd)

*Government of Malaysia v Dato' Mahindar Singh* [1996] 5 MLJ 626, HC (refd)

*Kerajaan Malaysia v Beyond Gateway Sdn Bhd* [2003] MLJU 178; [2003] 2 CLJ 527, HC (refd)

*Sun Man Tobacco Co Ltd v Government of Malaysia* [1973] 2 MLJ 163, FC (refd)

**Legislation referred to**

Income Tax Act 1967 s 142(1)

Limitation Act 1953 s 33(1)

*Noor Mazida bt Buliami (Inland Revenue Board of Malaysia) for the plaintiff.*  
*Agnes Tan (Teow Saw & Associates) for the defendant.*

**Varghese George J:****GROUND OF DECISION (ENCL 8)**

[1] The government had commenced this action against the defendant to recover the sum of RM1,871,387, unpaid tax still outstanding and payable by the defendant in respect of the assessment year 1997.

The total tax payable as per the notice of assessment dated 26 August 1997 duly served on the defendant was RM2,596,663.20. The defendant had within the stipulated 30 day period for settlement, made a part payment in the sum of RM976,458 only.

[2] The defendant failed to make any further payments and this had invited imposition of additional or increased tax.

Enclosure 8 was the government's application for leave to enter final judgment against the defendant. The affidavit filed in support of the application (encl 9) exhibited copies of the notice of assessment (26 August 1997) and of the certificate issued pursuant to s 142(1) of the Income Tax Act 1967 and it was contended that these were sufficient evidence and authority for the court to enter judgment for the amount claimed.

[3] At para 11 of encl 9, a detailed breakdown as to how the claimed sum of RM1,871,367 was derived was provided for and it was as follows:

Tahun Taksiran 1997

Cukai

RM 2,596,663.20

|   |              |                 |
|---|--------------|-----------------|
| A | (-)          | RM 976,458.00   |
|   |              | RM 1,620,205.20 |
|   | Kenaikan 10% | RM 162,020.52   |
|   |              | RM 1,782,225.72 |
| B | (-) Bayaran  | RM -            |
|   |              | RM 1,782,225.72 |
|   | Kenaikan 5%  | RM 98,11.28     |
|   | Jumlah       | RM 1,871,337.00 |

C [4] The Supreme Court in *Chong Woo Yit v Government of Malaysia* [1989] 1 MLJ 473; [1989] 2 CLJ 87 approved the observations of Arulanandom J in *Government of Malaysia v Abdul Rahman* [1975] 1 MLJ 276 as to the approach to be taken by courts where summary judgment was applied for by the government to recover unpaid tax. Arulanandom J had stated:

D When proceedings are commenced under O 14 normal rules for triable issues do not apply to cases of this nature because of the provisions of the Income Tax Act. Normally when defence raised triable issue it is a rule of law that unconditional leave to defend should be given but under s 106(3) of the Income Tax Act it clearly states that in any proceedings commenced by the government under s 106(1) of the Act for recovery of tax by civil proceedings as a debt due to the government the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal, or incorrectly increased under s 103(4) or (5)

E F [5] The Federal Court in *Sun Man Tobacco Co Ltd v Government of Malaysia* [1973] 2 MLJ 163 speaking through Gill FJ also clarified the position obtaining in law in this area, in the following words:

G There is a string of decided cases ... in which it has been held that the effect of the relevant provisions of the Income Tax Act 1967 is that on the service of a notice of assessment on the person assessed, the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and can then be recovered by the government by civil proceedings as a debt due to the government. On such civil proceedings being brought by the government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

H I (See also *Government of Malaysia v Dato' Mahindar Singh* [1996] 5 MLJ 626; *Kerajaan Malaysia v Beyond Gateway Sdn Bhd* [2003] MLJU 178; [2003] 2 CLJ 527).

[6] The defendant did not raise in this instant any issue as to the regularity of

the notice of assessment or its service and/or show any manifest error or discrepancy in the certificate in respect of the quantum of the unpaid tax that was being claimed by the government.

There was only a vague assertion by the defendant in the *afidavit jawapan defendan* (encl 10) that as the debt emanated from the assessment year 1997, limitation had set in and the government was statute-barred from prosecuting this claim.

[7] This long-shot and desperate attempt, I should say, to forestall judgment being entered on this ground, was wholly misconceived in law. The proviso to s 33(1) of the Limitation Act 1953 expressly excluded the application of the provisions of Limitation Act 1953 to any proceedings by the government for the recovery of any tax. The proviso was in the following terms:

Provided that this Act shall not apply to any proceedings by the Government for the recovery of any tax, duty or interest thereon or to any forfeiture proceedings under any written law in force in Malaysia relating to customs duty or to any proceedings in respect of the forfeiture of ship.

This saving position in law in so far as unpaid tax was concerned, was affirmed by the Supreme Court in the case of *Chong Woo Yit*.

[8] For the reasons highlighted and discussed above, I proceeded to allow encl 8 with costs, to enable the government to sign final judgment against the defendant in this action.

*Application allowed with costs.*

Reported by Ashok Kumar

A

B

C

D

E

F

G

H

I